

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION - LOS ANGELES

4 SHAKEYS PIZZA ASIA VENTURES,) Case No. CV 24-4546-SB (AGRx)
INC.,)
5 Plaintiff,) Los Angeles, California
6) Friday, February 28, 2025
v.) 10:23 A.M. to 10:47 A.M.
7)
PCJV USA, LLC, et al.,)
8)
Defendants.)
9 _____)

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13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE STANLEY BLUMENFELD, JR.
15 UNITED STATES DISTRICT JUDGE

16 Appearances: See Page 2
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1 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 28, 2025, 10:23 A.M.

2 THE CLERK: Calling item ten, 24-cv-4546,
3 *Shakeys Pizza Asia Ventures, Inc. v. PCJV USA, LLC, et al.*

4 Counsel, please state your appearances starting
5 with plaintiff.

6 MICHAEL D. MURPHY: Good morning, Your Honor.
7 Michael Murphy here on behalf of the plaintiff.

8 TODD M. MALYNN: Good morning, Your Honor.
9 Todd Malynn and Arash Beral on behalf of defendant.

10 THE COURT: All right. Good morning.
11 And this is -- yes, did you?

12 KENNETH P. HSU: Yes.

13 THE COURT: One lawyer should, generally, identify
14 all parties. No, that's okay. You can identify yourself,
15 please.

16 MR. HSU: Kenneth Hsu also on behalf of plaintiff,
17 Your Honor. Good morning.

18 THE COURT: All right. And this is here on a
19 contempt motion.

20 Let me hear from the defense, if you wish to be
21 heard. For the record, the Court did issue an order to try
22 to flesh out whether it should anticipate and be ready for an
23 evidentiary hearing, and the Court did not hear back from the
24 parties indicating that there is no request for an
25 evidentiary hearing. Is there a request for further

1 argument, Counsel?

2 MR. MALYNN: Your Honor, we're here to answer your
3 questions.

4 THE COURT: And please be seated, other than
5 Mr. Beral.

6 MR. MURPHY: There -- a couple points I would make
7 and --

8 ARASH BERLAL: Malynn.

9 MR. MURPHY: Malynn.

10 THE COURT: All right. Mr. Malynn.

11 MR. MURPHY: And those couple points were, in our
12 point of view, at the U.S. franchisor level. The -- PCJV and
13 Guy Koren promptly, diligently, and reasonably complied with
14 this Court's order by debranding -- taking steps to debrand
15 and taking the steps to get the approvals -- state and
16 regulatory approvals and landlord approvers [sic] to complete
17 the rebrand by having signed a gentlemen's -- switched out
18 once they -- the tenant and the landlords approved the
19 modification to the permanent signage elements. That's the
20 stage where we're at. Everything is now at the tenant-
21 landlord stage, and once we get the landlords' approval, the
22 -- we get a date for installation, the signage -- the
23 remaining permanent elements will be done.

24 But as far as the debrand, they quickly acted --
25 you know, social media, uniforms, cups -- they did that

1 promptly, diligently, and there's no evidence that they did
2 not act in accordance with their interpretation of the order,
3 Your Honor.

4 THE COURT: Is there any evidence with regard to
5 uniforms and product in November and December -- and perhaps
6 beyond but at least in November, December -- November 15th --
7 or starting November 15th of last year that your client was
8 using the brand contrary to the Court's order?

9 MR. MALYNN: Your Honor, the record itemizes the
10 dates when they put in the orders for the uniforms and I --
11 at the top of my head, I don't know exactly when the uniforms
12 came in, but when they -- they were ordered. When they came
13 in, they were sent out into the field. Was that by
14 December 15th? I don't know off the top of my head but as
15 declarations -- they went date by date of when they took
16 steps; so I believe you can rely upon the declarations to
17 answer that question.

18 THE COURT: And what about the photographs that
19 were presented by the plaintiff in this case? The
20 photographs that would suggest even ,if I'm recalling
21 correctly, as late as January?

22 MR. MALYNN: No. Well, the photographs in the
23 moving papers were in November. In January the permanent
24 signage is -- was still up. As far as the items, the -- in
25 January there was 35 stores that we believed were going to be

1 still affiliated with us that we would be working with. I
2 don't know the exact timing of those pictures because we have
3 lost control of all but one noncompany-affiliated franchisee.
4 So the status of those pictures were of nonaffiliated -- I
5 can't speak to their compliance. But with regards to the
6 PCJV company-owned stores in Seattle, which were down to
7 11 stores -- or stores -- restaurants, I believe the accurate
8 reflection are the pictures that were provided to you in the
9 supplement.

10 THE COURT: But the Court did receive not only the
11 moving papers but reply papers, and the reply responded to
12 your opposition and attached more photographs, if I recall
13 correctly, and that was in January, January 14th to 16th --
14 thereabouts. That would suggest that your client wasn't in
15 compliance as of the date that those photographs were taken.

16 Now, what I hear you to be saying, I think, is to
17 the extent that the photographs demonstrate lack of
18 compliance -- you're not disputing the photographs, you're
19 not saying the photographs are fabrications or submitted
20 fraudulently, but you're saying they would have been of third
21 parties who had no affiliation over which your client had no
22 control. Am I understanding you correctly?

23 MR. MALYNN: They can speak to the source of the
24 photographs. I don't know the chain of custody and which
25 stores. They -- that's their proffered evidence. I can say

1 as of this hearing that those don't accurate -- those
2 pictures do not accurately reflect the state of the stores.
3 So to the extent that -- here we're to -- we're here to
4 discuss coercive action to compel compliance, and there's no
5 course of action by the judge -- by Your Honor that is needed
6 to get us into compliance.

7 THE COURT: I understand that's your focus, but let
8 me tell you what the Court's focus is.

9 MR. MALYNN: Yes, sir.

10 THE COURT: There is that focus, to be sure, and it
11 may be that no coercive action is required at this point, but
12 the contempt proceeding also does raise the issue of
13 compensatory damages, effectively, during the period of time
14 where your client may not have been in compliance, and so my
15 questions are really directed at that.

16 MR. MALYNN: With respect to the compensatory,
17 Your Honor, we don't believe there are any compensatory
18 damages. This is about competing franchise systems. They
19 didn't have one -- there was one -- there was one existing
20 franchise system --

21 THE COURT: Let me pause you --

22 MR. MALYNN: Yes.

23 THE COURT: -- so that you're not off in one
24 direction and I'm asking about a different one.

25 There may be no claim here for royalty damage or

1 what have you -- at least I'm not satisfied, tentatively, by
2 what I've seen that there is, but there are the issue -- or
3 there is the issue of attorneys' fees, and that clearly is a
4 form of compensation that, if the Court finds that your
5 client was not in compliance, even if it currently is in
6 substantial compliance, that I'm going to have to deal with.

7 Did you have a meet-and-confer with the other side
8 about possibly agreeing upon an amount of attorneys' fees?
9 Before you answer, I'm not talking about the anti-SLAAP,
10 which the Court is disappointed with what it received --
11 largely from the plaintiff, I'm disappointed. But have you
12 had a meet-and-confer to see if you can resolve the
13 attorneys' fees' issue concerning the period of arguable
14 noncompliance?

15 MR. MALYNN: I have not had that discussion with
16 Mr. Murphy. Happy to have that discussion today if you want
17 us to go outside and talk about that.

18 THE COURT: All right. Unless you have anything
19 further to say, I do want to hear from Mr. Murphy.

20 MR. MALYNN: Yes, Your Honor.

21 THE COURT: Thank you.

22 Start, please, with the issue whether the defense
23 -- the defendant is currently in substantial compliance.

24 MR. MURPHY: Your Honor, no. The answer is no.
25 And we take as -- January 31st as kind of the -- from

1 January 31st to today as the point that is most important for
2 this Court. Prior to that date, this Court has already
3 found, we've established by clear-and-convincing evidence
4 that there was noncompliance at every store. So from -- the
5 question is now from January 31st to today.

6 I sent out Mr. Agaki to look at every -- he checked
7 out seven of the stores on -- the day before yesterday.
8 Culver City -- they have branded cups, say "Potato Corner."
9 They've got menus. They've got signs. They actually had
10 people with uniforms in Topanga that say "Potato Corner." I
11 have proof at every store that he went to still is displaying
12 "Potato Corner," and I'm going to talk about the signs in a
13 minute but even in obviously minor ways. On the receipts,
14 when you get it printed out, it says "Potato Corner"
15 sometimes with the cartoon potato on it.

16 So I could present -- actually I assembled this
17 declaration in a manner that is compliant with this Court's
18 requirements as far as depositing with the Court hard copies.
19 I didn't file it last night because we didn't have authority
20 to file anything in addition --

21 THE COURT: But, Mr. Murphy, I need for you to
22 focus on this proceeding --

23 MR. MURPHY: Sure.

24 THE COURT: -- not a proceeding that perhaps you
25 anticipate filing because I can't address -- or I can't

1 fairly ask the defense to address papers that have not yet
2 been filed, allegations that have not yet been made.

3 MR. MURPHY: Happy to.

4 THE COURT: So on this record is there substantial
5 compliance?

6 MR. MURPHY: No, Your Honor. Because the --

7 THE COURT: Point to the record, please.

8 MR. MURPHY: Well, the point to the record is that
9 they had -- they were ordered to show cause -- they had the
10 burden to establish as to each of the items that we raised
11 that there was either compliance -- kind of the purge issue
12 -- or is it was impossible to do so. What we -- what has
13 been filed with this Court are very broad, vague, sometimes
14 intentionally equivocal declarations that fail to identify as
15 to each of the -- even the categories of violations at each
16 of the stores that were the basis for this Court's conclusion
17 of clear-and-convincing evidence that they have either been
18 rectified or impossible. Let me given an example.

19 There are references to leases that prohibit
20 certain changes but no identification of any specific lease
21 as it applies to any specific store. We're just taking the
22 word for someone that generally every lease makes it
23 impossible to have fixed the issues that we raised that was
24 the basis for this Court's conclusion of clear-and-convincing
25 evidence.

1 So there actually has been zero evidence of a
2 admissible or specific kind that would provide any convincing
3 confirmation for this Court that the issue has been resolved.
4 In other words, it's essentially a null set, which is why we
5 believe that the -- probably the best solution is a special
6 master. Because we have -- we're -- we keep coming to court,
7 and we keep getting -- no -- there's no satisfying answer.
8 What I would love is a satisfying evidentiary presentation by
9 the defendants as to each of the categories, Your Honor, as
10 -- they've presented "Here's why we didn't," "Here's what
11 we've done." Instead, we get generalities.

12 THE COURT: Mr. Murphy, let me tell you what the
13 Court would appreciate.

14 MR. MURPHY: Thank you.

15 THE COURT: What the Court would appreciate is a
16 higher level of professionalism and cooperation in this case
17 -- and please look at me without a nonverbal response that is
18 disrespectful. Just don't respond -- a genuine meet-and-
19 confer, and you go through the issues, and you seek to reach
20 a resolution, as opposed to constantly firing at each other
21 or coming into court without giving the Court any advance
22 notice that there are all of these violations that you intend
23 to introduce and you've come to court with a substantial
24 declaration, which means that this proceeding is going to
25 have to be continued, in effect, where what the parties could

1 have done very simply -- and the plaintiff, in my view,
2 should have done -- is said, "Yes, we do want an evidentiary
3 hearing because there's noncompliance, and we're going to
4 show you that," and that's what this proceeding is for, and
5 instead, you come into court, don't ask for an evidentiary
6 hearing. My impression is there's substantial compliance
7 based on the record I have, and now you're telling me there
8 really isn't.

9 And so that's what the Court would like, would
10 really appreciate, and I'm not seeing it in this case. I've
11 seen a little bit of improvement, from what I can glimpse
12 into, in counsels' communications with each other but still
13 not the level of professionalism that should be expected,
14 that you should expect of yourself, your firm, and the other
15 side, and their firm. So that's what the Court would really
16 appreciate.

17 So what is it -- is your proposal? I'm not going
18 to order a special master at this point. So what's your next
19 ask?

20 MR. MURPHY: My next ask is -- may I first address
21 a couple of the points that the Court just raised -- very
22 shortly?

23 THE COURT: Respond to the Court's question,
24 please.

25 MR. MURPHY: We believe that the burden of proof

1 that was set by the Court's January 31st order essentially
2 set the table as to what would transpire today. In my
3 experience, when burden of proof is established and the other
4 side doesn't satisfy it, then you -- you're -- it's over.

5 I actually assumed, Your Honor, based upon the last
6 hearing we were here that Guy Koren would be here in person.
7 It was implied that that was going to be an expectation. So
8 when the Court issued its order two days ago, I immediately
9 communicated with defense counsel and said, "What are you
10 going to do?"

11 And they said, "We do not intend to call
12 witnesses."

13 And I said, "Well, I would like to call some
14 witnesses, then," and they said they do not want to and they
15 believe that it would require a stipulation.

16 So we had to make a game-time decision, Your Honor,
17 and the game-time decision was let's figure out where the
18 Court is. I believe that the evidence is insufficient to
19 address the comprehensive violations that were the basis of
20 the January 31st order.

21 And so my request is that we -- the Court order us
22 -- I think -- contempt has happened; right? So we know that
23 -- from January 31st prior. So the plaintiff is entitled to
24 some sort of compensation whether there is a purge or not.
25 We believe that there's evidence that there has been no

1 correction as of today. So I think the Court -- I would
2 request that the Court would order us to meet and confer in
3 -- within seven days -- in person, if we want, I've got a
4 nice new office -- and we can discuss a -- an agreement as to
5 compensation prior to January 31st and discuss how we resolve
6 what we believe to be the continued noncompliance issues,
7 which I have confirmed both personally and through
8 Eric Agaki.

9 THE COURT: All right. Thank you. Please take a
10 seat.

11 Let me hear from -- I'll hear from defense counsel.

12 MR. MURPHY: May I just say one more thing,
13 Your Honor? I apologize, but prior to what I said just now,
14 Your Honor was suggesting that I was making nonverbal cues.
15 I'm basically legally blind, and so I have to rotate between
16 progressives and here -- very aggressive progressives so that
17 I can see what the Court is saying and what I can read on my
18 computer. That was all I was doing, Your Honor, was moving
19 my head up to see the Court and then looking down at my
20 papers to make sure that I could see what I had written.

21 THE COURT: All right. I'll hear from defense
22 counsel.

23 MR. MALYNN: Thank you, Your Honor.

24 THE COURT: And just so that you know, my tentative
25 thinking coming into this hearing was to do essentially that

1 except to have the parties meet and confer with regard to
2 compensation -- Mr. Murphy, please take a seat -- and wasn't
3 anticipating that there was still remaining issues as to
4 compliance. And so my inclination -- but I'll give you an
5 opportunity to respond -- is to have you meet and confer in
6 person and to discuss an appropriate amount of compensation.
7 I do intend to find that there was contempt. It appeared to
8 me up until this proceeding that there, perhaps, was
9 substantial compliance. Frankly, I'm not sure at this point.
10 I just don't know. I don't have enough information.

11 If the parties can't reach an agreement, what I
12 will do with regard to substantial compliance and the
13 attorneys' fees is I'm going to have you back here, it's
14 probably going to be an evidentiary hearing, and I can assure
15 you the parties are going to incur a great deal more of
16 costs, and I'm going to set this matter aside, I'm going to
17 give you substantial time on both sides, and if I find that
18 there isn't compliance going forward, I am going to very
19 seriously consider coercive sanctions, including
20 imprisonment, if necessary.

21 So what I'm hearing from you, Counsel -- and I'm
22 not adjudicating it because I don't know -- is that your
23 clients were making good-faith efforts to come into
24 compliance and it took them until about now or last month.
25 Footnote -- just so that you know where the Court is -- I

1 hear that. It's an argument. It's not a persuasive
2 argument. I do not believe that your clients acted in good
3 faith to come into compliance with the Court's order up until
4 now, and now I thought they, perhaps, were.

5 Incidentally, with regard to up to now, if there
6 were issues with regard to the Court's order, the appropriate
7 response is to come back to the Court not to seek motion for
8 consideration and the like but seek modification with regard
9 to, for example, the amount of time that you might need to
10 transition.

11 But be that as it may, that's the Court's strong
12 inclination is to find that there's contempt here and order
13 compensatory damages only in the amount of reasonable
14 attorneys' fees.

15 With regard to going forward, if the Court has to
16 conduct further proceedings, in light of what I've seen, I am
17 going to want to hear from the witnesses. The witness is
18 going to come in, and the parties should be prepared for the
19 consequences, including your client, if I determine that
20 there isn't compliance up to that point. So your client now
21 has had -- it's now February 28th -- since November, when the
22 Court issued its order, a reasonable amount of time, to say
23 the least, to come into compliance.

24 Incidentally, I don't mean to be naïve or unaware
25 with regard to business and business transitions as your

1 client might think. I'm not. But that's not something that
2 becomes the Court's concern other than impossibility. Once
3 the Court finds, as it did, with regard to the appropriate
4 standard that there's a violation of intellectual property
5 rights, your client doesn't any longer have a right to a
6 smooth and easy transition, and if there are landlord
7 agreements, your client is faced with a federal court order
8 that your client has to comply with.

9 Now, the Court has tried to be, at least, somewhat
10 sympathetic to that position and not be overly aggressive in
11 calling your client out on the carpet with regard to dealing
12 with landlord issues, with the regulatory issues, and my
13 prior orders suggest that, but so that you know, Counsel,
14 what your obligations are -- what your clients' obligations
15 are is, if there are regulatory requirements that are
16 delaying things, if there are landlord requirements that are
17 delaying things is to get express approval from the Court to
18 allow your client to wait for those processes to proceed and
19 complete before you have to check those items off with regard
20 to signage for the landlord and with regard to rebranding
21 names by your client concerning the California regulators.

22 So I hope the parties will not dash the Court's
23 expectations yet again and will meet and confer and try to
24 resolve this. Your client should understand, if this comes
25 back to me after that and it turns out that he's not

1 complying, there are going to be very significant but
2 appropriate consequences. The plaintiff should understand,
3 as they will see in the Court's order regarding attorneys'
4 fees, I'm going to give -- be giving them \$5,000 with regard
5 to the anti-SLAAP because the Court is not satisfied that
6 they're getting the Court's message as well.

7 I'm expecting reasonableness, not exploitations,
8 getting leverage, and the like. Your client has lost this
9 issue at this point and needs to come into compliance. Get
10 the message. Stop delaying. The other side needs to get the
11 message that they need to engage in good faith and attempt,
12 within reason, to reach an accommodation rather than being
13 overly aggressive. If you can't, the Court is here, it will
14 adjudicate the disputes, and it will make fair and reasons --
15 reasoned decisions in that regard. But you, at least, now
16 have something that you can, at least, think about as you go
17 forward.

18 So do you wish to be heard with regard to what the
19 Court is proposing to do, which is to order a meet-and-
20 confer?

21 MR. MALYNN: No. I understand your position,
22 Your Honor, and we will endeavor to satisfy the Court.

23 THE COURT: All right.

24 MR. MALYNN: This is the first that we've heard of
25 the noncompliance as of today.

1 THE COURT: All right.

2 MR. MALYNN: So we will address that immediately
3 and get to the bottom of that.

4 THE COURT: All right. And so the parties are
5 ordered to meet and confer by no later than -- in person by
6 no later than March 7th, and you're to provide the Court with
7 a status report by March 10th as to the results of the
8 meet-and-confer and whether there are issues that need to be
9 adjudicated.

10 If there are issues that need to be adjudicated, by
11 March 14th you're to provide the Court with a witness list
12 and exhibit list. You're ordered to look at the Court's
13 trial court order and comply, essentially, as if this were a
14 bench trial with all of the filings that will be required for
15 you to file in advance of the hearing, and the Court is going
16 to set this matter for a hearing on any violations that
17 remain at issue, and I will do so on March 28. And the
18 parties should be prepared to trail. Depending upon what --
19 the amount of time that is necessary and the like, it's
20 possible that I will have to trail this matter with regard to
21 the evidentiary component, but I would strongly encourage the
22 parties to avoid having to come back to this Court on an
23 evidentiary hearing.

24 Anything further before I conclude this matter for
25 the --

1 MR. MALYNN: No, Your Honor.

2 THE COURT: -- defense?

3 Anything further, Mr. Murphy, on behalf of the
4 plaintiff?

5 MR. MURPHY: No, Your Honor.

6 THE COURT: Then this matter is concluded.

7 THE CLERK: All rise. Court is adjourned.

8 (Proceedings adjourned at 10:02 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

/s/ Julie Messa
Julie Messa, CET**D-403
Transcriber

April 6, 2025
Date